

A **LEE YEW SENG & ORS v. PENTADBIR TANAH WILAYAH
PERSEKUTUAN KUALA LUMPUR**

COURT OF APPEAL, PUTRAJAYA
AZIZAH NAWAWI JCA
SEE MEE CHUN JCA

B MOHAMED ZAINI MAZLAN JCA
[CIVIL APPEAL NO: W-01(NCVC)(A)-177-04-2023]
30 SEPTEMBER 2024

C **Abstract** – (i) *In a civil litigation, parties are bound by their pleaded case. The court has no obligation to hear a case that is not pleaded by the parties;* (ii) *Statutory amendments which affect substantive rights cannot be applied retrospectively;* (iii) *Former landowner of an acquired land will be entitled to late payment charges if there is a delay in the payment of compensation, including the payment into court;*
D (iv) *Legitimate expectation that a former landowner of an acquired land remains the owner of the said land does not arise even if he/she had continuously paid the quit rent of the said land if at all material times, he/she was aware that the acquisition of the land was lawful and in accordance with the Land Acquisition Act 1960.*
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CIVIL PROCEDURE: *Appeal – Appeal against decision of High Court – Acquisition of land in 1976 held to be lawful and in accordance with Land Acquisition Act 1960 ('LAA') – Issuance of Form G where former landowner was offered compensation was three years and seven months after date of Form D –*
F *Former landowner held to have no legitimate expectation he would remain as owner of acquired land despite had been paying quit rent of land until 1991 – Whether High Court erred – Whether pleaded case of former landowner for nullifying acquisition of land under s. 8 or 29 of LAA – Whether amended s. 8(4) of LAA applicable to acquisition of land made in 1976 – Whether former landowner entitled*
G *to late payment charges under s. 32 of LAA – Whether former landowner had legitimate expectation he would remain as owner of acquired land*

The appellants were the heirs of one 'Lee Yee Leong' ('LYL'), the owner of a piece of land measuring 3.75 acres located in Kuala Lumpur ('land'). LYL passed away on 15 February 2011. The respondent was the Land Administrator of the Federal Territory of Kuala Lumpur. Pursuant to the issuance of a Form D dated 25 June 1976, the said land was compulsorily acquired for the purpose of 'relocating landowners affected by the Sewerage and Sewage Disposal Plan'. Through a Form G dated 28 January 1980, which was issued three years and seven months after the date of the Form D, LYL was offered compensation amounting to RM168,750 in exchange for the said land. Following the issuance of a Form H, LYL had rejected the compensation offered, and requested for the acquired land to be replaced
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with another land with the same characteristics and value as he was planning to pass on the land to his heirs. LYL had not raised any objection against the adequacy of the offered compensation. Subsequently, *vide* a letter dated 2 August 2001, the respondent deposited compensation for the land in the amount of RM203,119.52 (inclusive of the principal and 6% interest) to the High Court ('deposited compensation amount'). According to the appellants, the fact regarding the said deposit was only known by them in April 2003. Nonetheless, in 2022, the appellants filed a suit in the High Court *via* an originating summons, seeking, among others: (i) a declaration that the land acquisition was null and void; and (ii) valuation of the land to be determined by the High Court, after taking into consideration an independent valuation of the market value of the land on the basis of vacant land subject to the existing title conditions carried out by a valuer appointed by the High Court ('OS'). Among the issues raised before the High Court were: (i) whether the acquisition of the land was lawful and in accordance with the Land Acquisition Act 1960 ('LAA') considering that the respondent had not complied with the requirements under s. 8(4) of the LAA; the appellants argued that after the date of the Form D, the respondent had to pay the appellants (at the material time, LYL) compensation for the acquired land within two years after the date of the Form D. However, this was not done; and (ii) whether the appellants had the legitimate expectation that they would remain the rightful and registered proprietor of the land considering that until 1991, LYL had continuously paid the quit rent of the land. The High Court dismissed the OS, holding that: (i) s. 8(4) of the LAA was not applicable at the time of the acquisition of the land because the amendment to the said section, which required the compensation to be paid within two years after the date of Form D, only came into effect on 3 November 1983, which was a date after the land was acquired in 1976. And the amendment could not be applied retrospectively since the said amendment was a statutory amendment which affect substantive rights; (ii) the appellants did not have the argued legitimate expectation because the appellants had failed to adduce any documents which could prove that the continuous payments of the quit rent of the land had truly been made by LYL; (iii) the acquisition of the land was lawful and in accordance with the LAA, and at all material times, the appellants were aware about the acquisition of the land; and (iv) the appellants were entitled to the deposited compensation amount. Hence, the present appeal. In this appeal, the issues raised were: (i) whether the delayed payment of the compensation was in contravention of s. 29 of the LAA; (ii) whether the delayed payment of the compensation was in contravention of s. 8(4) of the LAA; (iii) whether the appellants were entitled to the deposited compensation amount; and (iv) whether the appellants had the legitimate expectation that they would remain the rightful and registered proprietor of the land due to the continuous payments of quit rent of the land by LYL.

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A Held (dismissing appeal)

Per Azizah Nawawi JCA delivering the judgment of the court:

- B** (1) The issue of delay under s. 29 of the LAA was not a pleaded case of the appellants. From the intitlement of the OS, the appellants had pleaded s. 8 of the LAA, and not s. 29. The pleaded case of the appellants in seeking the acquisition of the land to be nullified was premised on s. 8 and not s. 29 of the LAA. This was also the position taken by the respondent, as per its written submission. For this reason, considering that the parties were bound by their pleaded case, the appellants' reliance on s. 29 of the LAA was not an issue for consideration before this court. (paras 20, 23 & 26)
- C**
- D** (2) Section 8(4) of the LAA does not apply retrospectively. The acquisition of the land was conducted in 1976, before s. 8(4) was amended, which came into effect in 1983. Section 8(4) does not have a retrospective effect because, as in the case of *Amitabha Guha & Anor v. Pentadbir Tanah Daerah Hulu Langat*, statutory amendments which affect substantive rights had no retrospective effect. The acquisition of the said land was therefore lawful and procedurally correct, and the issuance of the Form G three years after the date of the Form D does not invalidate the acquisition of the land. (paras 29-31)
- E**
- F** (3) Where there has been a delay in the payment of compensation, including payment into court, the former owner of the acquired land is entitled to late payment charges under s. 32 of the LAA. It was due to this that the High Court had made an order for the payment of late charges, because of the delay of the respondent in depositing the deposited compensation amount. As such, the High Court had not made an error of law when it made an order against the respondent for late payment charges. (paras 39 & 40)
- G**
- H** (4) The High Court had made a finding that the appellants had failed to prove the alleged continuous payments of quit rent by LYL because no documentary evidence had been adduced to prove such assertion. In addition, the High Court also found that LYL/appellants were informed about the land acquisition through, among others, the issuance of Form D, Form G and Form H. In fact, LYL had rejected the acquisition of the land *vide* a letter dated 3 November 1996, where he requested replacement land instead of monetary compensation in exchange for the land. Moreover, LYL also signed a Form H where he clearly stated 'Saya tidak menerima tawaran di atas'. Therefore, LYL had the requisite knowledge pertaining to the acquisition of the land and had rejected the offer of compensation. However, he had not raised any objection regarding the adequacy of the compensation offered. Further, as per the land title, it showed that the lots of the land had been
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transferred on 31 May 1976. Hence, the finding of the High Court that the appellants were aware that the acquisition of the land was legal and in pursuant to the LAA at all material times, was agreed. There was therefore no merit in the present appeal; it was dismissed with costs. (paras 42-45 & 47-52)

Case(s) referred to:

Amitabha Guha & Anor v. Pentadbir Tanah Daerah Hulu Langat [2021] 3 CLJ 1 FC (refd)

Arena Tegar Sdn Bhd v. Pentadbir Tanah Daerah Johor Bahru & Anor [2017] 9 CLJ 77 HC (fol)

Aseambankers Malaysia Bhd & Ors v. Shencourt Sdn Bhd & Anor [2014] 2 CLJ 773 CA (refd)

Bungsar Hill Holding Sdn Bhd v. Damansara Realty Bhd [2019] 4 CLJ 429 FC (refd)
Ismail Bakar & Ors v. Director Of Lands And Mines, Kedah Darul Aman [2010] 9 CLJ 810 CA (refd)

Janagi v. Ong Boon Kiat [1971] CLJU 42; [1971] 1 LNS 42 HC (refd)

Lee Ing Chin & Ors v. Gan Yook Chin & Anor [2003] 2 CLJ 19 CA (refd)

Pacific Forest Industries Sdn Bhd & Anor v. Lin Wen-Chih & Anor [2009] 6 CLJ 430 FC (refd)

Pemungut Hasil Tanah, Daerah Barat Daya, Penang v. Kam Gin Paik & Ors [1986] 1 CLJ 283; [1986] CLJ (Rep) 33 PC (refd)

Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v. Ong Gaik Kee [1983] CLJU 14; [1983] 1 LNS 14 FC (refd)

Pemungut Hasil Tanah, Kuantan v. Oriental Rubber & Palmoil Sdn Bhd [1985] CLJU 127; [1985] 1 LNS 127 FC (refd)

Projek Lebuhraya Utara-Selatan Sdn Bhd v. Kim Seng Enterprise (Kedah) Sdn Bhd [2013] 6 CLJ 958 CA (refd)

RHB Bank Bhd v. Kwan Chew Holdings Sdn Bhd [2010] 1 CLJ 665 FC (refd)

Legislation referred to:

Federal Constitution, art. 13

Land Acquisition Act 1960, ss. 8(4), 29, 32A

Rules of Court 2012, O. 7 r. 2(1A)

For the appellant - Chan Kheng Hoe, Rachel Lim Han Ying & Ng Zong Hui; M/s Chong + Kheng Hoe

For the respondent - Rohaiza Hamzah; DPP

[Editor's note: For the High Court judgment, please see *Lee Yew Seng lwn. Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur* [2023] CLJU 998; [2023] 1 LNS 998 (affirmed).]

Reported by Syamim Ariffin

JUDGMENT

Azizah Nawawi JCA:

Introduction

[1] This is an appeal against the decision of the learned High Court Judge in dismissing the appellants' originating summons seeking the following prayers:

- A (i) a declaration that the declaration of intended acquisition (Form D) under the Land Acquisition Act 1960 (“LAA 1960”) dated 25 June 1976 for the acquisition of 3.75 acres of land held under Mukim Grant 1742 (formerly EMR 3294) Lot 2709 and Mukim Grant No. 1 Lot 3275 Mukim Kuala Lumpur, Federal Territory (“the said land”) is null and void;
- B (ii) that a valuation be determined by this Honourable Court after taking into account an independent valuation of the market value of the said land on the basis of vacant land subject to the existing title conditions to be carried out by a valuer appointed by this court;
- C (iii) that the costs for obtaining the independent valuation be paid by the defendant/respondent;
- (iv) that the defendant/respondent pays the plaintiffs/appellants the value determined in para. (ii) above;
- D (v) that interest at the rate of 5% per annum on the amount determined in para. (ii) from the date of 25 June 1976 until full settlement; and
- (vi) that general damages be assessed by this Honourable Court and paid to the plaintiffs/appellants by the defendant/respondent for loss of use of the said land.
- E [2] The grounds of the application (in Bahasa Malaysia) are as follows:
- F 1. Plaintiff-plaintif Pertama hingga Ke-3 merupakan adik beradik, manakala Plaintiff Ke-4 merupakan ibu mereka. Mereka merupakan pemilik berdaftar dan/atau pemilik yang sah bagi tanah yang dipegang di bawah Geran Mukim 1742 (dahulu EMR 3294) Lot 2709 dan Geran Mukim No. 1 Lot 3275 Mukim Kuala Lumpur, Wilayah Persekutuan yang sejumlah 3.75 ekar (“Tanah tersebut”).
- G 2. Plaintiff-plaintif Pertama hingga Ke-3 telah mewarisi Tanah tersebut dari ayah mereka, Lee Yee Leong (“LYL”).
3. Borang D (Perishtihaan Pengambilan yang Di-Cadangkan) di bawah Akta Pengambilan Tanah 1960 bertarikh 25.6.1976 telahpun dikeluarkan untuk pengambilan Tanah tersebut atas alasan “untuk penempatan semula pemilik-pemilik tanah yang terlibat dengan Rancangan Sewerage and Sewage Disposal.
- H 4. Berdasarkan Seksyen 8 Akta Pengambilan Tanah 1960, pampasan pengambilan tanah harus diberikan dalam masa 2 tahun dari tarikh Borang D dikeluarkan, namun Defendan telah gagal berbuat demikian.
- I 5. LYL telah secara berterusan membayar cukai tanah bagi Tanah tersebut sehingga 1991 dimana beliau hanya menerima surat dari Defendan bertarikh 20.3.1992 yang memberitahu beliau cukai tanah bagi Tanah tersebut tidak boleh diterima atas alasan hakmilik Tanah tersebut telah pun diserahkan kepada Defendan pada 17.7.1986.

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| 6. Plaintiff-Plaintiff telah secara berterusan berunding dengan pelbagai pihak untuk menyelesaikan isu pengambilan Tanah tersebut yang tidak sah, tetapi tidak berjaya. | A |
| 7. Tanah tersebut telah seterusnya dipindahmilik kepada Langkah Bakti Sdn Bhd, sebuah syarikat peribadi untuk pembinaan pangsapuri dan bukannya alasan yang sepertimana tertakluk dalam Borang D. | B |
| 8. Namun begitu, Langkah Bakti Sdn Bhd hanya menjalankan pembangunan ke atas Tanah tersebut pada 1997. | |
| 9. Hakikatnya, Plaintiff-Plaintiff telah kehilangan tanah mereka kerana Tanah tersebut telah diambil tanpa mengikuti proses undang-undang yang ditetapkan dan tanpa pampasan. | C |
| 10. Plaintiff-plaintiff mempunyai harapan sah (legitimate expectation) dengan pembayaran cukai tanah atas Tanah tersebut bahawa mereka tetap merupakan pemilik Tanah tersebut. | |
| 11. Dalam apa jua keadaan, Borang D telah luput dan pengambilan Tanah tersebut adalah terbatal dan tidak sah. | D |

Salient Facts

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| [3] The appellants in this case are the heirs of Lee Yee Leong ("LYL"), who owned a piece of land held under Mukim Grant 1742 (formerly known as EMR 3294) Lot 2709 and Mukim Grant No. 1 Lot 3275 in Mukim Kuala Lumpur, Federal Territory of Kuala Lumpur, with an area of 3.75 acres (the said land). LYL passed away on 15 February 2011. | E |
| [4] In 1976, the said land was scheduled for acquisition through Federal Gazette No. 3048 dated 15 July 1976 for the purpose of "relocating landowners affected by the Sewerage and Sewage Disposal Plan," as stated in Form D dated 25 June 1976. | F |
| [5] Form E dated 11 October 1976 was served to LYL to inform him about the inquiry regarding the scheduled land acquisition that would be conducted on 8 November 1976. | G |
| [6] However, LYL insisted that he would not accept any monetary compensation in exchange for the land that was compulsorily acquired. Instead, LYL wanted a piece of land with similar characteristics and value as a fair exchange because he intended to pass the land on to his heirs. | H |
| [7] Through Form K (notice that land has been acquired) issued on 3 December 1979, LYL was informed about the acquisition of the land. | |
| [8] Through Form G (written offer of compensation) dated 28 January 1980, LYL was offered compensation amounting to RM168,750 in exchange for the land that was compulsorily acquired by the respondent. | I |

A [9] Following the issuance of Form H dated 28 January 1980, LYL promptly rejected the offer on 28 February 1980 but did not raise any objections regarding the adequacy of the offered compensation.

B [10] Through a letter dated 2 August 2001, compensation amounting to RM203,119.52 (principal and 6% interest) was deposited with the court in accordance with the Court Order No: S7-21-91 dated 5 September 2000.

[11] The appellants themselves stated in para. 18 of the supporting affidavit that they only became aware of the compensation being deposited in the High Court around April 2003.

C [12] However, after nearly 20 years, in 2022 (about more than 40 years after the acquisition of the said land), the appellants initiated this action seeking to nullify the acquisition and/or to claim higher compensation through this originating summons.

Decision Of The Learned Judge

D [13] The appellants' originating summons was dismissed by the learned High Court Judge. However, the learned judge made an order that the appellants are entitled to interest on the compensation amount of RM203,119.52 that was deposited with the High Court in accordance with the court order dated 5 September 2000 for Originating Summons No: S7-21-91 of 2000, from the date the money was deposited in the High Court on 2 August 2001 until the date of the decision of the High Court, that is, 24 March 2023.

F [14] The learned judge also made a finding that the acquisition of the said land through Form D is valid. The issue arose when LYL disagreed with the amount of compensation offered.

[15] On the application of s. 8 of the LAA 1960, the learned judge made the following findings:

G 7) Berkaitan perenggan 15, 16, 17 affidavit sokongan PlaintiffPlaintif bahawa berdasarkan seksyen 8 APT pampasan tanah (Dalam Borang G) harus diberikan dalam masa 2 tahun dari tarikh Borang D dikeluarkan dan Defendan telah gagal berbuat demikian. Plaintiff-Plaintif menyatakan bahawa Borang G hanya dikeluarkan pada 28.1.1980 iaitu selepas 3 tahun 7 bulan dari Borang D dengan pampasan RM168,750.00. Plaintiff-Plaintif berhujah bahawa Borang D telah luput oleh itu pengambilan Tanah tersebut adalah terbatal dan tidak sah ketika Borang G dikeluarkan. Plaintiff-Plaintif menyatakan mereka tidak menerima apa-apa bayaran pampasan dan pada tahun 2001 iaitu selepas 25 tahun selepas Borang D, Defendan mendepositkan pampasan dengan Pendaftar Mahkamah Tinggi yang hanya diketahui oleh Plaintiff-Plaintif sekitar April 2003. (Rujukan ekshibit LYS-8).

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8) Adalah menjadi tegasan Defendan bahawa pada ketika pengambilan Tanah tersebut dilakukan pada tahun 1976 Borang D dikeluarkan, seksyen 8(4) APT tidak terpakai kerana seksyen tersebut belum lagi wujud. Peruntukan pampasan pengambilan tanah harus diberikan dalam tempoh 2 tahun dari tarikh Borang D dikeluarkan hanya ditambah selepas pindaan terhadap APT 1960 pada 3.11.1983.

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9) Mahkamah berpandangan bahawa seksyen 8(4) APT 1960 tidak wujud semasa pengambilan Tanah tersebut dibuat. Pindaan hanya dibuat pada 3.11.1983. Tidak timbul isu had masa pampasan perlu dibuat dalam tempoh 2 tahun. Disebabkan pindaan tersebut bukanlah berkuatkuasa secara retrospektif. (Rujukan dibuat kepada Warta Kerajaan Persekutuan bertarikh 3.11.1983 ditandakan sebagai ekshibit RMM-7).

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[16] On the issue that the appellants have a legitimate expectation that they remained the owners of the said land with the continued payments of the quit rents, the learned judge made the following findings:

16) Berkaitan hujahan Plaintiff-Plaintif mereka mempunyai harapan sah (legitimate expectation) bahawa mereka tetap merupakan pemilik Tanah tersebut dengan pembayaran cukai tanah atas Tanah tersebut walaupun Borang D telah dikeluarkan sejak 1976, Mahkamah dapati pernyataan Plaintiff adalah pernyataan kosong semata-mata. Dalam perenggan 22 Afidavit Sokong Plaintiff di Lampiran 2 tidak mengemukakan apa-apa dokumen yang menunjukkan pembayaran cukai selama 15 tahun selepas Borang D dikeluarkan.

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17) Mahkamah juga bersetuju dengan perenggan 21 afidavit jawapan Defendan bahawa Plaintiff-Plaintif telah dimaklumkan berkenaan pengambilan Tanah tersebut melalui Borang D (Pengisytiharan Pengambilan Yang Dicadangkan), Warta Kerajaan No. 3048, Borang I (Perakuan Segera), Borang K (Pemberitahu bahawa tanah telah diambil milik), Borang G (Pemberian Bertulis Pampasan), Borang H (Pemberitahuan Pemberian dan Tawaran Pampasan), dan hasil semakan hakmilik didapati kedua-dua lot tanah telah dipindahkan pada 31.5.1976. Pada setiap masa material Plaintiff-Plaintif adalah berpengetahuan akan Tanah tersebut telah diambil secara teratur dan sah mengikut APT 1960. (rujukan dibuat kepada ekshibit RMM-10, RMM-11 dan RMM-12).

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Our Decision

[17] It is common ground that an appellate court will not intervene in the decisions of the lower courts unless the trial court was shown to be plainly wrong in arriving at its decision or where there had been no or insufficient judicial appreciation of the evidence. Judicial appreciation of evidence meant that a judge who was required to adjudicate upon a dispute must arrive at his decision on an issue of fact by assessing, weighing and, for good reasons, either accepting or rejecting the whole or any part of the evidence placed before him.

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(See *Lee Ing Chin & Ors v. Gan Yook Chin & Anor* [2003] 2 CLJ 19; [2003] 2 MLJ 97).

A *Whether The Delayed Payment Breaches s. 29 LAA 1960*

[18] It is the submission of the appellants that s. 29 of the LAA 1960 provides for payment to be made “as soon as may be”, and any delay in making the payment invalidates the land acquisition. Section 29 reads as follows:

B (1) After a notice of award in Form H, Form LC or Form R has been served in the manner prescribed by section 53 upon all interested persons the Land Administrator shall, **as soon as may be**, make payment of each amount awarded to the person entitled thereto unless:

- C (a) there shall be no person competent to receive such payment;
(b) the person entitled thereto does not consent to receive the amount awarded; or
(c) there is a dispute as to the right or title of the person to receive the compensation, or as to the apportionment thereof.

D (2) In the cases referred to in paragraph (1)(a), (b) and (c) the Land Administrator shall apply ex parte to the Registrar of the court in chambers, supported by affidavit, for an order to deposit the amount awarded into court and, notwithstanding anything to the contrary in the law for the time being in force relating to civil procedure, the Registrar shall have power to make such order. (emphasis added)

E [19] The appellants have relied on the decision of this court in *Ismail Bakar & Ors v. Director Of Lands And Mines, Kedah Darul Aman* [2010] 9 CLJ 810, where it was held that payment of compensation nine years after the acquisition was not reasonable and that the delay would be in contravention of both s. 29 of the LAA 1960 as well as art. 13 of the Federal Constitution.
F As such, the court held that the delay invalidates the acquisition.

[20] However, we are of the considered opinion that the issue of delay under s. 29 of the LAA 1960 is not a pleaded case of the appellants. From the intitulement of the originating summons, the appellant had pleaded s. 8 of the LAA 1960, not s. 29. Order 7 r. 2 (1A) of the Rules of Court 2012 (“ROC 2012”) provides that every originating summons “shall state in its intitulement any provisions of these Rules and any provision of any written law under which the court is being moved.”
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[21] In para. (4) of the originating summons, the appellant has pleaded that:
H Berdasarkan Seksyen 8 Akta Pengambilan Tanah 1960, pampasan pengambilan tanah harus diberikan dalam masa 2 tahun dari Tarikh Borang D dikeluarkan, namun Defendan telah gagal berbuat demikian.

[22] In the affidavit in support affirmed by Lee Yew Seng on 8 February 2022, the appellants state as follows:
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C. Alasan-alasan Saman Pemula Ini

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C1 Borang D adalah tidak sah dan terbatal

15. Plaintiff-plaintif dinasihati oleh Tetuan CKH dan sesungguhnya percaya bahawa berdasarkan seksyen 8 LAA 1960, pampasan pengambilan tanah (dalam Borang G) harus diberikan dalam masa dua tahun dari tarikh Borang D dikeluarkan, namun Defendan telah gagal berbuat demikian.

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16. Borang G (Pemberian Bertulis Pampasan) LAA 1960 hanya dikeluarkan pada 21.1.1980, iaitu selepas 3 tahun 7 bulan dari Borang D, dengan pampasan sejumlah RM168,750.00.

17. Maka, saya dinasihati oleh Tetuan CKH dan sesungguhnya percaya bahawa Borang D telahpun luput dan oleh itu pengambilan tanah tersebut adalah terbatal dan tidak sah ketika Borang G dikeluarkan.

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18. Dalam apa pun jua keadaan, Plaintiff-plaintif sehingga tarikh penfailan Affidavit ini tidak menerima apa-apa bayaran Pampasan tersebut. Pada tahun 2001, yakni 25 tahun selepas Borang D, Defendan mendepositkan pampasan dengan Pendaftar Mahkamah Tinggi yang hanya diketahui oleh Plaintiff-plaintif sekitar April 2003.

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[23] Therefore, from the intitulement and the grounds as pleaded in the originating summons as well as the affidavit in support, the pleaded case of the appellants in seeking to nullify the acquisition of the said land is premised on s. 8, not s. 29 of the LAA 1960. Indeed, this is also the position taken by the respondent, where it is submitted in para. (11) of the written submission of the respondent that:

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Perayu-Perayu memplidkan bahawa pengambilan tanah yang dijalankan oleh Responden pada tahun 1976 adalah tidak sah di sisi undang-undang kerana ia tidak mematuhi seksyen 8 Akta Pengambilan Tanah ("APT") disebabkan pampasan/award melalui Borang G perlu diserahkan dalam tempoh dua (2) tahun dari tarikh Borang D dikeluarkan oleh Responden.

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[24] In *Projek Lebuhraya Utara-Selatan Sdn Bhd v. Kim Seng Enterprise (Kedah) Sdn Bhd* [2013] 6 CLJ 958; [2013] 5 MLJ 360, this court held as follows:

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[18] What this amount to is this. *That the court is not entitled and should not decide a suit on an issue which is not pleaded. In short, the trial of the suit must be confined to the pleadings* (Yew Wan Leong v. Lai Kok Chye [1990] 1 CLJ (Rep) 330; [1990] 2 MLJ 152 (SC), at p 154) and the pleadings operate to effectively define and delimit with absolute clarity and precision the real matters in controversy between the parties. In this way, the parties could prepare their respective cases and the court too will adjudicate on those issues and no more ...

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(emphasis added)

[25] In *RHB Bank Bhd v. Kwan Chew Holdings Sdn Bhd* [2010] 1 CLJ 665; [2010] 2 MLJ 188, the Federal Court held as follows:

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- A [33] Second, the proposition of the Court of Appeal was not even pleaded by the respondent. The respondent's cause of action against the appellant was for breach of contract. Nowhere in the respondent's pleading, expressly or by implication, can we detect a claim for breach of a joint venture agreement arising out of a fiduciary duty placed upon the
- B appellant in the capacity as principal of an agent. *It is a cardinal rule in civil litigation that the parties must abide by their pleadings ...*
- ...
- C [35] *On this, we would like to add that it is not the duty of the court to invent or create a cause of action or defence under the guise of doing justice for the parties lest it be accused of being biased towards one against the other.* The parties should know best as to what they want and it is not for the court to pursue a cavalier approach to solving their dispute by inventing or creating cause or causes of action which were not pleaded in the first place. Such activism by the court must be discouraged otherwise the court would be accused of making laws rather than applying them to a given set of facts.
- D (emphasis added)
- E [26] Therefore, we are of the considered opinion that since the parties are bound by their pleaded case, the appellant's reliance on s. 29 of the LAA 1960 is not an issue for consideration before this court. (See *Janagi v. Ong Boon Kiat* [1971] CLJU 42; [1971] 1 LNS 42; [1971] 2 MLJ 196; *Pacific Forest Industries Sdn Bhd & Anor v. Lin Wen-Chih & Anor* [2009] 6 CLJ 430; [2009] 6 MLJ 293; *Aseambankers Malaysia Bhd & Ors v. Shencourt Sdn Bhd & Anor* [2014] 2 CLJ 773; [2014] 4 MLJ 619).
- Whether The Delayed Payment Breaches Subsection 8(4) Of The LAA 1960*
- F [27] The pleaded case of the appellants is that premised on sub-s. 8(4) of the LAA 1960, compensation for land acquisition must be paid within two years from the date Form D was issued. However, the respondent had failed to do so in the present appeal and therefore the acquisition of the said land is null and void.
- G [28] Subsection 8(4) of the LAA 1960 reads as follows:
- H (4) A declaration under subsection (1) shall lapse and cease to be of any effect on the expiry of two years after the date of its publication in the Gazette in so far as it relates to any land or part of any land in respect of which the Land Administrator has not made an award under subsection 14(1) within the said period of two years, and, accordingly, all proceedings already taken or being taken in consequence of such declaration in respect of such land or such part of the land shall terminate and be of no effect.
- I [29] We are of the considered opinion and we agree with the learned judge that sub-s. 8(4) of the LAA 1960 does not apply retrospectively. The acquisition of the land was conducted in 1976, before the amendment to sub-s. 8(4), which came into effect in 1983 *vide* Gazette notification dated

3 November 1983. We are of the considered opinion that sub-s. 8(4) does not have a retrospective effect on acquisitions made before the amendment in 1983. A

[30] We refer to the decision of our apex court in *Amitabha Guha & Anor v. Pentadbir Tanah Daerah Hulu Langat* [2021] 3 CLJ 1, where question 6 before the Federal Court is whether statutory amendment that affect substantive right have retrospective effect. In answering question 6 in the negative, the Federal Court held as follows: B

[67] *As a general rule, statutory amendments that affect substantive rights do not operate retrospectively.* First, the 2016 Amending Act did not expressly exclude the application of s. 30(1)(b) of the Interpretation Acts which provides that the repeal of a written law in whole or in part shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed law. The Privy Council also expressed the view that “[a] part from the interpretation Statutes, there is at common law a *prima facie* rule of construction that a statute should not be interpreted retrospectively so as to impair an existing right or obligation unless that result in unavoidable on the language used.” (see *Yew Bon Tew*, (*supra*) at p, 2). That a retrospective operation should not be given to a statute to impair an existing right and that one should avoid a construction that inflicts a detriment was emphasised by the then Supreme Court in *National Land Finance Co-Operative Society Limited*, (*supra*) at p 106 (see also *Society of La Salle Brothers*, (*supra*) at paras. [43] to [45]; *Tenaga Nasional Bhd v. Kamarstone* (*supra*) at paras. [6] to [71]). C

[68] It must be borne in mind that the LAA 1960 is a special enactment dealing with the fundamental right to property under art. 13 of the Federal Constitution. As a general rule, such statutes should be construed strictly and any doubt should be resolved in favour of the landowner so as to give meaning to the constitutional protection of a person’s right to his property (*Ee Chong Pang* (*supra*) at para. [21]; *Sistem Lingkaran Lebuhraya Kajang Sdn Bhd* (*supra*) at para. [4]). Accordingly, *we would answer question 6 in the negative.* (emphasis added) D

[31] Therefore, we find that the acquisition of the said land was lawful and procedurally correct, and that the issuance of Form G three years after the date of Form D does not invalidate, the acquisition of the said land. F

Late Payment Charges

[32] In any event, the Legislature has clearly postulated that any delay under sub-s. 8(4) of the LAA 1960 will have the dire consequence that such declaration for land acquisition “shall terminate and be of no effect.” G

[33] However, there is no similar provision in s. 29 of the LAA 1960 that nullifies the acquisition of the affected land when there was delay in payment, whether due to failure of the landowner to accept the compensation or the delay of the land authority to pay the compensation sum into court pursuant to s. 29 of the LAA 1960. I

- A [34] The Court of Appeal in *Ismail Bakar & Ors v. Director of Lands and Mines, Kedah Darul Aman* (*supra*) made a finding that non-compliance with s. 29 of the LAA 1960 nullifies the land acquisition based on the cases of (i) *Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v. Ong Gaik Kee* [1983] CLJU 14; [1983] 1 LNS 14; [1983] 2 MLJ 35; and (ii) *Pemungut Hasil Tanah, Daerah Barat Daya, Penang v. Kam Gin Paik & Ors* [1986] 1 CLJ 283; B [1986] CLJ (Rep) 33. In para. [20], the court held as follows:
- [20] In the present case, guided by the above authorities, in particular, *Ong Gaik Kee* and *Kam Gin Paik*, we hold that the nine year delay in paying the compensation is grossly unreasonable and hence is in contravention of s. 29 of the Act and art. 13 cl. 1 of the Federal Constitution ...
- C
- D [35] However, in *Ong Gaik Kee* (*supra*), the delay is not on payment of the compensation under s. 29, but the delay of holding the inquiry seven years after the declaration under s. 8 of the LAA, which was published in the *Gazette* on 25 April 1974. Similarly, in *Kam Gin Paik*, there was a delay of seven years between the s. 8 declaration and the notice of the inquiry issued by the Land Administrator to determine compensation. Both cases are not on delay in making the payment under s. 29 of the LAA 1960, upon which the acquisition process has been completed.
- E [36] We also take note that the court in *Ismail Bakar & Ors v. Director Of Lands And Mines, Kedah Darul Aman* (*supra*) also referred to the Supreme Court decision *Pemungut Hasil Tanah, Kuantan v. Oriental Rubber & Palmoil Sdn Bhd* [1985] CLJU 127; [1985] 1 LNS 127; [1986] 1 MLJ 39 where there was a delay of three and half years (3½) between the notification under s. 8 of the LAA and the date of the award. Despite making a finding that there was no reasonable explanation for the long delay, the Supreme Court set F aside the order of the High Court that quashed the inquiry and the award on the ground that the respondent (landowner) had failed to prove that he had suffered grave injustice as a result of the unreasonably long delay.
- G [37] In any event, ss. 29 to 32A of the LAA 1960 deal with “Payment of compensation or deposit in court”. These provisions only apply after the acquisition process has been completed or concluded.
- H [38] Section 29 of the LAA 1960 is with regards to payment of compensation into court (see *Bungsar Hill Holding Sdn Bhd v. Damansara Realty Bhd* [2019] 4 CLJ 429, para. 57, whilst s. 32 deals with late payment charges. The interplay between ss. 29 and 32 can be gleaned from the decision of Justice Choo Kah Sing in *Arena Tegar Sdn Bhd v. Pentadbir Tanah Daerah Johor Bahru & Anor* [2017] 9 CLJ 77. Even though the issue in this case is on late payment charges under s. 32, the learned Judicial Commissioner explained the interplay between s. 29 and 32 LAA 1960. His I Lordship explained as follows:

[22] Section 32 of the Act states as follows:

A

32. Late payment charges

(1) When the amount of any compensation awarded under this Act in respect of any land is not paid or deposited on or before the due date, the Land Administrator shall pay the amount awarded with late payment charges thereon at the rate of eight percent per annum from the due date until the time of such payment or deposit.

B

[23] The chief words in the aforementioned provision lie within the sentence "... the Land Administrator shall pay the amount awarded with late payment charges ..." The word "shall" connote a statutory and obligatory duty. *In other words, the provision imposes on the Land Administrator a statutory duty to pay not just the amount awarded, but also to pay the late payment charges in the event either one of the two scenarios are applicable.*

C

[24] The *first scenario* is when the Land Administrator fails to pay the compensation award to the entitled person on or before the due date. *The second scenario is when the Land Administrator fails to deposit the compensation award with the court on or before the due date.*

D

[25] The meaning of 'due date' is explained in s. 32(1C) of the Act which states as follows:

(1c) In this section "due date" in relation to any land means the date of taking possession of the land or a date three months after the service of a notice under section 16(1) in respect of the land, whichever is the earlier.

E

[26] *When will the two scenarios mentioned earlier arise? The answer can be found in s. 29 of the Act which states as follows:*

F

29. Payment of compensation or deposit in Court

(1) After a notice of award in Form H has been served in the manner prescribed by section 53 upon all interested persons the Land Administrator shall, as soon as may be, make payment of each amount awarded to the person entitled thereto unless -

G

(a) there shall be no person competent to receive such payment;

(b) the person entitled thereto does not consent to receive the amount awarded; or

(c) there is a dispute as to the right or title of the person to receive the compensation, or as to the apportionment thereof.

H

(2) In the cases referred to in subsection (1)(a), (b) and (c) the Land Administrator shall apply ex parte to the Registrar of the Court in chambers, supported by affidavit, for an order to deposit the amount awarded into Court and, notwithstanding anything to the contrary in the law for the time being in force relating to civil procedure, the Registrar shall have power to make such order.

I

- A [27] Section 29 of the Act explicitly states as soon as may be after the service of Form H, the payment of the amount awarded has to be made to the person entitled. The meaning of ‘as soon as may be’ has been lucidly explained in the decision of the Court of Appeal in *Ismail Bakar & Ors v. Director of Lands and Mines, Kedah Darul Aman* [2010] 9 CLJ 810.
- B [28] In the event the Land Administrator cannot determine who the entitled person is, then the Land Administrator is required under s. 29(2) of the Act to apply to the Registrar of the court to deposit the awarded amount with the court.
- C [29] *This court observes that there is no time frame mentioned in the provision for the Land Administrator to apply to the court to deposit the awarded amount with the court. However, reading ss. 29(2), 32(1) and 32(1C) together, it postulates a situation that the Land Administrator has to make the application and deposit the amount awarded into the court on or before the due date. In the event the Land Administrator fails to do so, late payment charges shall be imposed on the Land Administrator.*
- D [30] ...
[31] ...
- E [32] It is the considered view of this court that when there is a dispute as to the right or title of the person to receive the compensation amount, the Land Administrator is immediately obligated under s. 29(2) of the Act to apply to the Registrar of the court to deposit the amount awarded with the court. Section 29(2) of the Act states clearly that the Land Administrator shall apply ex parte to the Registrar for an order to deposit the amount awarded into court.
- F [33] On the present fact, the first defendant applied to the court to deposit the compensation amount on 30 December 2015, which was after the due date, *ie*, 18 November 2015. The first defendant only obtained the court order on 21 January 2016.
- G [34] The time from the date the first defendant was made aware of the dispute to the due date, which is between 15 September 2015 and 18 November 2015, was approximately two months. It is the considered view of this court that there was ample time for the first defendant to make an application to the Registrar of the court to deposit the compensation amount with the court before the due date.
- H [35] In the event the first defendant had made the application earlier, *ie*, right after being made aware of the dispute, the first defendant could have enough time to deposit the compensation amount on or before the due date. *The first defendant could have avoided late payment charges if the first defendant had taken swift action to comply with s. 29(2) of the Act.* The first defendant only made the application on 30 December 2015, after the due date. This clearly shows that the first defendant did not take immediate action after being made aware of the dispute.
- I

[36] The compensation amount was finally paid to the plaintiff on 24 June 2016. Therefore, the number of days of delay in the payment of the compensation amount between 18 November 2015 (due date) and 24 June 2016 (payment date) are 219 days in total.

A

[37] In *Ismail Bakar & Ors (supra)*, the Court of Appeal at p. 824 states:

... it is clear that *under s. 32 there is an automatic right to be paid late payment charges as long as there has been a delay in making compensation payment by the Land Administrator*. Under s. 32 there is no necessity for the appellants [the landowner in the case] to make a claim for late payment charges. The entitlement to late payment charges is as of right and is immediate. (emphasis added)

B

C

[39] We agree with the analysis of Justice Choo Kah Sing in *Arena Tegar Sdn Bhd (supra)*. Therefore, we are of the considered opinion that where there has been a delay in the payment of the compensation, including payment into court, the former owner of the acquired land is entitled to late payment charges under s. 32 of the LAA 1960. It is for this reason that the learned judge has made an order for the payment of late charges because of the delay of the respondent in depositing the compensation sum into court.

D

[40] As such, we are of the considered opinion that the learned judge did not commit an error of law when she made an order against the respondent for late payment charges.

E

Payment Of Quit Rent

[41] It is the submission of the appellants that the learned judge had failed to consider the pertinent evidence when concluding that there was no proof of continuous payments of the quit rent. This oversight led to her erroneous finding that the appellants had no legitimate expectation of retaining ownership of the said land.

F

[42] The appellant relied on the letter dated 17 April 1986, ten years after the acquisition, to show evidence indicating that the land office still recognised the appellants as the landowners. In the said letter, the appellants were duly informed of the change in the particulars of the title, together with the instruction to pay quit rent according to the new title information.

G

[43] Added to that, there is also the letter dated 21 August 1986 from the land office seeking the payment of quit rent in accordance with the computerised system.

H

[44] Further, there was also the letter dated 19 February 1992, where LYL wrote to the land office to put on record that he tried to pay quit rent but was rejected.

[45] Lastly, there was a letter dated 20 March 1992 whereby the respondent had explained that the quit rent was rejected because the said lands had been surrendered back to the land office.

I

A [46] It is therefore the submissions of the appellants that the above letters must surely point to the fact that quit rent had been paid all these times, save for the year 1992 when it was rejected.

B [47] However, on the payment of the quit rent, the learned judge made a finding of fact that the appellants have failed to prove the alleged continuous payment of the quit rent for 15 years after Form D was issued. The learned judge made a finding of fact that the appellants' assertions on the said quit rent payments for years are mere rhetoric as there is just no documentary evidence to support such assertions. Surely there must be some documents to show alleged payments of the quit rents over so many years.

C [48] Added to that, we are of the considered opinion and we agree with the learned judge findings that the LYL/appellants were informed about the land acquisition through Form D (declaration of proposed acquisition), Government *Gazette* No. 3048, Form I (immediate certificate), Form K (notification of land acquisition), Form G (written compensation offer), and D Form H (notification of award and compensation offer).

[49] In fact, the appellants' predecessor and original owner (LYL) had rejected the acquisition of the said land *vide* a letter dated 3 November 1996 (exh. LYS4) where he states, *inter alia*, as follows:

E 7. In other words, the land in Pantai can be said to be an exchange for the land in Ulu Klang.

...

F 10. It is easy to sell the land but it is impossible to acquire another piece at such an ideal locality. If the City Council must acquire my land, then I can only pray that the City Council will give me back another piece nearby as a fair exchange, because I cannot accept any money.

G [50] Added to that, LYS had signed Borang H (pemberitahu pemberian dan tawaran pampasan) dated 28 February 1980 (LYS6), where he had clearly stated that "Saya tidak menerima tawaran di atas". As such, LYS had the requisite knowledge about the acquisition of the said land and had rejected the offer of compensation. However, LYL did not raise any objection regarding the adequacy of the offered compensation.

H [51] Further, from the land title, it showed that both lots have been transferred on 31 May 1976. Therefore, at all material times, we agree with the learned judge findings that the appellants were aware that the said land was acquired in a legal manner pursuant to the LAA 1960.

Conclusion

I [52] For the reasons enumerated above, we find no merit in the appeal and the appeal is dismissed with costs. The decision of the learned judge is affirmed.
